

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

HORACIO LICANO PACHECO,	§	
Reg. No. 81458-280,	§	
Movant,	§	
v.	§	EP-14-CV-384-KC
	§	EP-11-CR-1827-KC-6
UNITED STATES OF AMERICA,	§	
Respondent.	§	

**ORDER WITHDRAWING REFERRAL TO MAGISTRATE JUDGE AND GRANTING
LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

Movant Horacio Licano Pacheco seeks leave to proceed *in forma pauperis* with an appeal of the Court’s memorandum opinion and order and final judgment denying his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct a sentence (ECF No. 1020).¹ For the reasons outlined below, the Court will grant Pacheco’s motion.

To proceed *in forma pauperis* on appeal, pursuant to Federal Rule of Appellate Procedure 24, a party must be economically eligible and take his appeal in good faith.² A prisoner establishes his economic eligibility by submitting a certified copy of his prison trust fund account statement for the six-month period immediately preceding the filing of his legal action.³ A party demonstrates his good faith when he seeks appellate review of any non-frivolous issue, but

¹ “ECF No.” in this context refers to the Electronic Case Filing number for documents docketed in EP-11-CR-1827-KC-6.

² Fed. R. App. P. 24(a); *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983).

³ *Cf.* 28 U.S.C. § 1915(a)(2) (2012) (requiring a prisoner seeking to appeal a judgment in a civil action without prepaying fees to file a certified copy of the trust fund account statement).

he need not show probable success on the merits.⁴ The reviewing court may only examine whether the appeal involves “legal points arguable on their merits (and therefore not frivolous).”⁵

Pacheco provides information concerning his prisoner trust fund account which indicates he is economically eligible to proceed *in forma pauperis*. Moreover, the Court finds that Pacheco may raise a non-frivolous or colorable issue on appeal.

Accordingly, the Court **WITHDRAWS** the referral of this motion to the United States Magistrate Judge and **GRANTS** Pacheco’s motion to proceed *in forma pauperis*. The Court **DIRECTS** the Clerk of the District Court to immediately notify the parties and the Fifth Circuit Court of Appeals of this order.

SO ORDERED.

SIGNED this 13th day of December, 2016.


KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

⁴ *Howard*, 707 F. 2d at 220.

⁵ *Id.* (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).